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Elimination of racism and racial discrimination

Measures to combat contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the report on contemporary forms of racism, racial discrimination, xenophobia and related intolerance prepared by Mr. Maurice Glèlè-Ahanhanzo, Special Rapporteur of the Commission on Human Rights, in accordance with General Assembly resolution 56/267 of 27 March 2002.

Summary

The present report is submitted in response to General Assembly resolution 56/267, entitled "Measures to combat contemporary forms of racism and racial discrimination, xenophobia and related intolerance". In it, the Special Rapporteur highlights the factors which have adversely affected the functioning of the special procedures in general and of his mandate in particular, especially the inhospitable climate with which human rights promotion and protection have had to contend since the tragic events of 11 September 2001, the uncertainty about the end of the present Special Rapporteur's mandate and the new conference service rules governing the submission of reports.

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As regards activities, the Special Rapporteur describes his participation in the work of the fifty-eighth session of the Commission on Human Rights, in the course of which he spoke about the principal achievements of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held at Durban, South Africa. The Special Rapporteur also mentions the mission to Australia and the planned mission to Canada, which never came about because of the uncertainty to which he referred earlier.

As to contemporary forms of racism and racial discrimination, xenophobia and related intolerance, emphasis is placed on the resurgence of racism, racial discrimination and xenophobia in various parts of the world, affecting migrants and refugees in particular. This phenomenon would appear to be the consequence of the electoral successes of nationalist and extreme right parties in a number of countries and to influence measures adopted with respect to immigration, especially between countries of the South and those of the North. It may also be the consequence of the terrorist attacks of 11 September 2001, which seems to have engendered a stigmatization of Muslims and Arabs. The report describes the persistence of racist propaganda on the Internet, where more than 200 sites propagating racial hatred have been counted. Lastly, the Special Rapporteur notes that, in parallel with the worsening of tension in the Middle East, the number of anti-Semitic acts has increased. Several thousands of incidents ranging from anti-Semitic graffiti and e-mail to desecration of cemeteries and attacks on synagogues have been reported. Demonstrations against the State of Israel have occurred in various cities throughout the world, accompanied by banners bearing extremely aggressive anti-Semitic language.

In the chapter on measures taken or envisaged by Governments, judicial organs or other bodies, the report describes various affirmative action measures adopted by the Government of Brazil to remedy the effects of racial discrimination on Afro-Brazilian population groups. In the United States of America, in Birmingham, Alabama, on 22 May 2002, a former member of the Ku Klux Klan, named Bobby Frank Cherry, was condemned to life imprisonment after being found guilty of the murder of four black girls following the blowing up of a church. Although more than four decades had elapsed, justice was therefore done, giving satisfaction to the parents of the victims. In France, the Court of Cassation has recognized "testing" (see para. 28) as a way of providing judicial proof of racial discrimination practised by a third party. This unusual method of combating discrimination consists in having a bailiff or the police certify that a person has been refused admission to a public establishment solely on account of the colour of his or her skin or some other somatic characteristic.

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I. Introduction

1. In resolution 56/267, on measures to combat contemporary forms of racism and racial discrimination, xenophobia and related intolerance, the General Assembly drew attention to a number of situations that gave rise to concern and recommended various actions which Member States should take to eliminate the evils cited.

2. The General Assembly expressed its alarm at the increase in racist violence in many parts of the world, inter alia, as a result of the resurgent activities of associations established on the basis of racist and xenophobic platforms and charters, and the persistent use of those platforms and charters to promote or incite racist ideologies. It emphasized that remembering the crimes and wrongs of the past, wherever and whenever they occurred, unequivocally condemning its racist tragedies and telling the truth about history are essential elements for international reconciliation and the creation of societies based on justice, equality and solidarity. It expressed its deep concern that those advocating racism and racial discrimination misuse new communication technologies, including the Internet, to disseminate their repugnant views. It also expressed its deep concern that racism and racial discrimination against migrant workers still persist despite the efforts undertaken by the international community to protect the human rights of migrant workers and members of their families. It condemned political platforms and organizations based on racism, xenophobia or doctrines of racial superiority and related discrimination, as well as legislation and practices based on racism, racial discrimination, xenophobia and related intolerance, as incompatible with democracy and transparent and accountable governance. It noted with concern the existence of multiple discrimination, in particular against women.

3. The General Assembly therefore, inter alia, urged States to adopt and implement legislation and administrative measures that counter racism, racial discrimination, xenophobia and related intolerance in all spheres of public life. It also recommended that measures should be taken against the use of audio-visual and electronic media to incite racial hatred and urged States to take all necessary measures to address specifically, through policies and programmes, racism and racially motivated violence against women and girls and to increase cooperation, policy responses and effective implementation of national legislation and of their obligations under relevant international instruments, and to take other protective and preventive measures aimed at the elimination of all forms of racially motivated discrimination and violence against women and girls.

4. With a view to remedying the double discrimination suffered by women, the General Assembly urged States to mainstream a gender perspective in the design and development of measures of prevention, education and protection aimed at the eradication of racism, racial discrimination, xenophobia and related intolerance at all levels, to ensure that they effectively target the distinct situations of women and men. It also called upon States to combat trafficking in persons, in particular women and children, and smuggling of migrants, taking into account practices that endanger human lives or lead to various kinds of servitude and exploitation such as debt bondage, slavery, sexual exploitation and labour exploitation.

5. With respect to the activities of law enforcement agencies, the General Assembly urged States to design and implement effective policies and programmes to prevent, detect and ensure accountability for misconduct by police officers and

other law enforcement personnel that is motivated by racial discrimination, xenophobia and related intolerance and to prosecute perpetrators of such misconduct. It also urged States to eliminate the phenomenon popularly known as "racial profiling", consisting in the practice by police and other law enforcement officers of relying on race, colour, descent or national or ethnic origin as the basis for subjecting persons to investigatory activities or for determining whether an individual is engaged in criminal activity.

6. In its concern at the situation in which various groups find themselves as a result of racial discrimination, the General Assembly underlined the need to design, promote and implement, at the national, regional and international levels, strategies, programmes and policies and adequate legislation, which may include special and positive measures, for furthering equal social development and the realization of the civil and political, economic, social and cultural rights of all victims of racism, racial discrimination, xenophobia and related intolerance, inter alia, through more effective access to political, judicial and administrative institutions. It also stressed the need to guarantee that the benefits of development, science and technology contribute effectively to the improvement of the quality of life for all, without discrimination. In particular, the Assembly urged States to develop policies to eliminate manifestations of racism, racial discrimination, xenophobia and related intolerance, including violence, against Roma/Gypsies/Sinti/Travellers and to ensure the full enjoyment of equality by these groups. It also called upon States to review and revise, where necessary, their immigration 'aws, policies and practices so that they are free of racial discrimination and compatible with States' obligations under international human rights instruments.

7. Lastly, the General Assembly urged all Governments to cooperate fully with the Special Rapporteur with a view to enabling him to fulfil his mandate, including the examination of incidents of contemporary forms of racism and racial discrimination, inter alia, against Africans and people of African descent, xenophobia, Negrophobia, Islamophobia/anti-Muslim, anti-Semitism and related intolerance.

8. The present report seeks to respond to the resolution whose content is summarized above. It should be mentioned, however, that various factors have militated against fulfilment of the mandate. The first of these is the inhospitable climate with which human rights promotion and protection have had to contend since the tragic events of 11 September 2001. The insidious link which has been established between the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban and the terrorist attacks of 11 September, together with the undermining of human rights as a result of the security measures adopted against terrorism, have had the effect of relegating to secondary position the requirements of the mandate. Also, the uncertainty and even confusion which were created regarding the effective date of cessation of functions of someone who has been fulfilling a mandate for at least six years have discouraged the present mandate holder. Even before the Commission on Human Rights gave its opinion, the Office of the United Nations High Commissioner for Human Rights wrote, on 21 February 2002, to the Special Rapporteur to inform him that preparations for the missions he had planned were on hold. When the Commission finally clarified the situation by its decision 2002/14, the Office of the High Commissioner wrote again to the Special Rapporteur, on 15 May 2002, to inform him that his mandate would continue until 24 July 2002. By that time, three months had elapsed, and the

mandate holder already had taken on other national and international commitments and could not be fully available.

9. The third factor to be taken into account, perhaps in conjunction with the second, concerns the treatment which the special procedures received at the fifty-eighth session of the Commission on Human Rights. During that session, in the wake of the drastic measures imposed by the General Assembly curtailing meeting time, the time allotted to some of the special rapporteurs was reduced so much that they found it impossible to introduce their reports properly. A fourth factor affecting fulfilment of the mandate was the conference service rules, and specifically the requirement that the special rapporteurs had to submit their reports to the General Assembly by 2 July at the latest, barely two months from the time the Commission ended its work, thereby allowing too little time for the compilation of information.

10. At their ninth meeting, which was held in Geneva from 24 to 28 June, the special rapporteurs discussed the inhospitable climate in which they had to fulfil their mandates and concluded that it was hardly conducive to human rights promotion and protection. Lip service is paid to human rights, but in actual fact regressive and inconsistent measures are impairing the smooth functioning of machinery for the protection of human rights. This discourages the mandate holders and undermines the effectiveness of the implementation of human rights principles.

11. In such a troubled atmosphere, the Special Rapporteur could do no more than give a concise account of some of his activities and summarize the principal trends of contemporary manifestations of racism, racial discrimination, xenophobia and related intolerance, with the hope that his successor will be able to carry out the necessary studies.

II. Activities of the Special Rapporteur of the Commission on Human Rights

A. Participation in the work of the Commission on Human Rights

12. From 22 to 26 March 2002, the Special Rapporteur participated in the work of the fifty-eighth session of the Commission on Human Rights and introduced his general report on racism, racial discrimination, xenophobia and related intolerance (E/CN.4/2002/24) and the report on his mission to Australia from 22 April to 10 May 2001 (E/CN.4/2002/24/Add.1 and Corr.1).

13. The Special Rapporteur highlighted the main achievements of the Durban Conference, including:

(a) Acknowledgement of the evils of colonialism, and classification of slavery and the slave trade as crimes against humanity;

(b) Affirmation of the equal dignity of human beings in all places and at all times, whether based on religion or reason, and denunciation of racism and racial discrimination as products of archaic thinking that stand in the way of human progress;

(c) The proposition that dialogue between civilizations provides responses to the problem of achieving respect for cultural and human diversity, in particular that of accepting difference in others in the face of dominant societies' attempts to

assimilate other individuals or groups into their own culture, to exclude them or to eliminate them;

(d) The acknowledgement that effective action to combat racism and racial discrimination requires a combination of educational, penal, economic and social measures; and

(e) The acknowledgement that changing racist mentalities requires education, notably an educational process that notes the evils of racism and racial discrimination while praising human and cultural diversity and encouraging interpersonal and intercultural exchanges.

14. The Special Rapporteur is convinced that the Durban Declaration and Programme of Action constitute a fundamental document which should be further developed and implemented without delay in the interest of mutually supportive and effective action against racism, racial discrimination, xenophobia and related intolerance, through human rights education and economic, social and cultural development measures designed to correct persistent forms of structural racism and eradicate the social inequalities which represent the legacy of racism and feed poverty.

15. During his participation in the work of the Commission on Human Rights, the Special Rapporteur also emphasized manifestations of racism, racial discrimination and xenophobia which had targeted persons of Muslim faith or Arab origin in the wake of the terrorist attacks of 11 September 2001. The Commission, concerned to find a solution to this alarming situation, adopted resolution 2002/9, entitled "Combating defamation of religions", in which it requested the Special Rapporteur to examine the situation of Muslim and Arab peoples in various parts of the world with special reference to physical assaults and attacks against their places of worship, cultural centres, businesses and properties in the aftermath of the events of 11 September.

16. As regards his mission to Australia, the Special Rapporteur noted the substantial efforts made by the Australian Government to end racism and racial discrimination. A number of institutions — anti-discrimination commissions or human rights and equal opportunity commissions — have been established at the federal level and in the federated states to combat these phenomena. Programmes aimed at improving the living conditions of the indigenous peoples exist, even if they have not yet succeeded in producing the desired results. Recognition of ethnic diversity and the promotion of inter-ethnic harmony undoubtedly constitute an ideal policy for consolidating the Australian nation, provided it does not waver under the influence of electoral considerations.

17. He also stated that the question of reconciliation with the Aboriginal peoples remains outstanding, because it affects the foundations of the Australian State and conflicting cultural values. For the Aboriginals, despite the democratic foundations of the Australian State and its desire to incorporate all its ethnic components on an egalitarian basis, this State is a manifestation of colonization, whose consequences remain to this day, notably through the limitation of their land rights, the tragedy of the abducted children, cultural clashes and highly precarious living conditions outside the wealth of the majority of Australians. In their view, the resolution of conflicts is dependent on negotiation on equal terms between Australia's governors and those who originally possessed the continent, the eminent owners of the

Australian lands, of which they have been dispossessed, particular account being taken of their indissoluble links with the land. The land question remains crucial and is the key to the Australian problem. The Commonwealth Government and the dominant political forces mainly take a forward-looking approach which, while envisaging the possibilities of remedying the consequences of past actions, wishes to reduce their effects on the building of a new nation.

18. The Government cast doubt on the "credibility" of the Special Rapporteur's analysis but merely submitted some corrections of a clerical nature, which were reproduced in a corrigendum issued as document E/CN.4/2002/24/Add.1/Corr.1. The Special Rapporteur hopes that his recommendations will result in an improved situation for the Aboriginal peoples and social harmony for the Australian people.

B. Mission envisaged by the Rapporteur

19. Following allegations which he had received on the subject of racial discrimination affecting a number of ethnic minorities and indigenous peoples (E/CN.4/2001/21, para. 16) and having received an invitation from the Canadian Government, the Special Rapporteur had intended to visit Canada in June 2002. Because the actual date of termination of the mandate was not set until 26 April, the Canadian Government considered that there was insufficient time to organize the mission and asked for it to be deferred to a later date.

III. Manifestations of racism, racial discrimination, xenophobia and related intolerance

20. The principal contemporary tendencies of racism, racial discrimination, xenophobia and related intolerance are connected with the increase in xenophobia in various parts of the world, the persistence of racist propaganda on the Internet and the rise in anti-Semitism.

A. Racism, racial discrimination and xenophobia

21. The reports and allegations which have reached the Special Rapporteur[1] indicate that there has been a resurgence of racism, racial discrimination and xenophobia in various parts of the world, affecting migrants and refugees in particular. This phenomenon would appear to be the consequence of the electoral successes of nationalist and extreme right parties in a number of countries and to influence measures adopted with respect to immigration, especially between countries of the South and those of the North. It may also be the consequence of the terrorist attacks of 11 September 2001, which seem to have engendered a stigmatization of Muslims and Arabs, who are supposed to be hand in glove with the terrorists. In the same context, the emergence of a verbal tendency to hierarchize cultures, some being considered "superior" to others, can only be a divisive factor pitting individuals and communities against one another and helping to sustain racism.

22. Numerous allegations complain of the rigorous treatment awaiting travellers from countries of the South in the consulates of the North, of the extreme

selectiveness in granting visas and of the frequent instances of racial profiling in the airports of the latter countries. Combined with the security measures designed to combat terrorism, the measures against immigration now give the impression that an iron curtain is falling between the North and the South of the planet. There is also more xenophobic and racist behaviour on the part of law enforcement officials. There appears to be a vital need for an in-depth study to analyse in a holistic perspective the causes of the migratory phenomena and to ponder the human dimensions of globalization and the basic values of the civilization emerging from the twenty-first century, of which human rights, and in particular the dignity of the human person, are the most important. The question of globalization and its relationship to human rights is of the utmost relevance.

B. Racist propaganda on the Internet

23. The Simon Wiesenthal Centre, which is specialized in the monitoring of online racist activities, recently released a CD-ROM entitled "Digital Hate", which lists the sites engaged in racist propaganda. According to the Centre, which has examined approximately 25,000 Internet sites, there are more than 200 sites which propagate racial hatred. Pursuant to the provisions of the Durban Programme of Action (A/CONF.189/12, chap. I, Programme of Action, paras. 143-147), the Special Rapporteur hopes that the States concerned and the international community will succeed in developing measures to nip this increasingly alarming phenomenon in the bud. A group of experts at the Council of Europe is currently working out ways of harmonizing the legislation of member States. An additional protocol to the Convention on Cybercrime, signed by approximately 30 European States in November 2001, would make it possible to ban racist propaganda on the Internet. But already voices are being raised in protest against such an idea within European associations grouped together as the Global Internet Liberty Campaign, which claims to defend public freedoms on behalf of freedom of expression.

C. Anti-Semitism

24. In parallel with the worsening of tension in the Middle East, anti-Semitic acts (harm to property and people, attacks on Jewish places of worship and institutions) have increased in number. Jewish organizations have reported several thousands of incidents ranging from anti-Semitic graffiti and e-mail to attacks on synagogues and desecration of cemeteries. Demonstrations against the State of Israel have occurred in various cities throughout the world, accompanied by banners bearing extremely aggressive anti-Semitic language.

IV. Measures taken or envisaged by Governments, judicial organs or other bodies

25. Some noteworthy measures against racism, racial discrimination and related intolerance have been taken by the Government of Brazil. Judicial decisions adopted in the United States and France have also caught the Special Rapporteur's attention.

A. Brazil

26. The Brazilian Government informed the Special Rapporteur of the initial measures it had taken with a view to implementing the Durban Declaration and Programme of Action. On 21 March 2002, on the occasion of the International Day against Racism and Racial Discrimination, a protocol on affirmative action was signed at Branco Institute, which is the institute for training Brazilian diplomats, by the Ministries of Science and Technology, Justice, Culture and Foreign Affairs for the purpose of awarding twenty scholarships to Brazilians of African descent wishing to embark on diplomatic careers. Another important official act that occurred on the same day was the signing by the Palmarès Foundation, the Ministries of Science and Technology and Culture and the National Council for Scientific and Technological Development of a cooperation agreement for the support of populations in the *Quilombo* (territory inhabited by descendants of runaway slaves). The Brazilian Government intends to adopt further measures of affirmative action to remedy the disadvantages experienced by populations owing to racial discrimination.

B. Judicial measures

27. The Special Rapporteur was informed that in the United States of America, in Birmingham, Alabama, on 22 May 2002, a former member of the Ku Klux Klan, named Bobby Frank Cherry, was condemned to life imprisonment after being found guilty of the murder of four black girls following the blowing up of a church. The Sixteenth Street Baptist Church was a rallying point for militants of the civil rights movement during the 1960s. To the satisfaction of the parents of the victims, justice was done, although more than four decades later, Bobby Frank Cherry having been the last of the four alleged perpetrators of the crime.

28. In France, the Court of Cassation has recognized "testing" as a way of providing judicial proof of racial discrimination practised by a third party. This unusual method of combating discrimination consists in having a bailiff or the police certify that a person has been refused admission to a public establishment solely on account of the colour of his or her skin or some other somatic characteristic. It has been used recently by SOS Racisme in the case of bars and discotheques in France. First, persons of Maghreb or African origin ask to enter the establishment. If access is denied on the ground that the establishment is a private club or is full, or that they are incorrectly dressed, persons of European origin present themselves. If the latter are allowed in, an act of discrimination can be certified and a case brought. A number of managers of establishments have been ordered to pay fines but have appealed. The decision of the Court of Cassation quashes a judgement of the Montpellier Appeal Court, dated 5 June 2001, acquitting operators and doormen in a number of discotheques in the region of Hérault.

V. Conclusions

29. **Combating racism, racial discrimination, xenophobia and related intolerance requires conviction, consistency, perseverance and determination. The current international context should not cause these requirements to be**

lost from view, since they affect millions of people who are daily subjected to the horrors of discriminatory treatment. The Durban Declaration and Programme of Action contain all the elements necessary for a mobilization of efforts and the taking of effective action against the evils concerned. It is our duty to ensure that the text does not remain a dead letter but instead becomes living testimony of the steadfastness of the international community's struggle against such archaisms in the twenty-first century as racism, racial discrimination, xenophobia and related intolerance. It is imperative that everyone everywhere, without any distinction, through education and in all humility, should internalize human rights, especially the equal dignity of the human person, and should practise them in his or her daily life in social relationships, at both the national and the international levels.

Notes

[1] Including the annual report of the European Commission against Racism and Intolerance for 2001 CRI(2002)19.